



DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA

NOTICE

April 14, 2004

OFFICE OF MINE
RECLAMATION

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TO: ALL MINE OPERATORS

SUBJECT: NEW INFORMATION REGARDING CHANGES TO SMARA
AS REQUIRED BY SB 649

The purpose of this letter is to alert you to changes in the Surface Mining and Reclamation Act of 1975 (SMARA) that may affect your business practices. Your cooperation and assistance is sought to help the Department of Conservation (Department) implement these changes as smoothly as possible.

Senate Bill 649 (Kuehl, Chapter 794 of Statutes 2003) became effective on January 1, 2004. The following briefly describes the changes that became operative on that date:

Annual Reporting Fees – SB 649 increased the annual mine reporting fees by increasing the cap on fees that have been in effect since 1990. The State Mining and Geology Board has already promulgated emergency regulations (attached), which allow the Department to update the Annual Reporting forms and instructions for the report due July 1, 2004. The permanent regulations will shortly begin circulation for public comment.

Precious Metal Fees – SB 649 created the Abandoned Mine Reclamation and Minerals Subaccount to deposit proceeds from a fee on gold and silver. Mining operators will be required to pay \$5 per ounce of gold and \$0.10 per ounce of silver they produce. The money deposited in this subaccount will be used, upon appropriation by the Legislature, to remediate abandoned mines throughout the state. This fee will begin to be collected on July 1, 2004.

3098 List Restrictions – SB 649 added additional criteria to SMARA, Section 2717 (b). This section determines which mine operators will be included on the 3098 List. The list is informally called “the **3098 List**” for AB 3098 (Sher), the 1992 legislation that created the list to encourage surface mine operators to comply with SMARA. Existing law required a mine operation to have an approved reclamation plan and an approved financial assurance to be included on this list and eligible to sell to State agencies. New criteria additionally requires that the mine operator has also filed the Annual Report, paid its fees and demonstrates its annual inspection by the lead agency showing that the operation is in compliance with SMARA.

3098 List Sellers and Purchasers – Existing law prohibits a state agency from purchasing or utilizing sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the SMARA, unless the operation is identified on the **3098 List**. That prohibition has been extended to transactions involving all local agencies beginning on January 1, 2004. Specifically, SB 649 added Section 20676 to the Public Contract Code, prohibiting operators of surface mines in California whose operations are not identified on a list published pursuant to Section 2717(b) of the Public Resources Code (PRC) from selling California mined material to a local agency.

The list, which is maintained by the Department of Conservation's Office of Mine Reclamation (OMR), changes throughout the year, and can be viewed at the OMR website:

www.conservation.ca.gov/OMR/ab_3098_list/index.htm

To confirm whether or not a specific operator is on or off the list at any given time, OMR should be called at (916) 323-9198. A printed version of the list will be made available upon request.

Please share this notice, or the information contained in it, with others that you believe may be impacted by this change and contact this office if you have any questions or concerns regarding a specific transaction. Please call us at (916) 323-9198.

ADOPTED EMERGENCY REGULATION LANGUAGE: California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1

§ 3698. Fees Calculation.

Annual reporting fees cited in these regulations shall be adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(a) The annual reporting fee for a multiple site surface mining operation shall be four thousand dollars (\$4,000).

(b) The annual reporting fee for surface mining operations which are no longer in operation with no intent to resume, which had no mineral production in the reporting calendar year, and

(1) Which did not complete reclamation during the reporting calendar year shall be \$100; or

(2) Which completed reclamation during the reporting calendar year shall be \$100. Proof of completion of reclamation, approved by the lead agency, shall be submitted with this fee.

(c) Except as otherwise provided, the annual reporting fee for surface mining operations shall be calculated on the total primary mineral commodity produced in the reporting calendar year. A factor to determine the amount of fee adjustments from one reporting calendar year to the next shall be calculated according to the following formula:

$$[(AT_{RY}) - (AT_{PY})]/(AT_{PY}) = \text{Factor}$$

Where: Adjusted Total (AT) equals the Amount Requested by the Director, less a projected amount from fees set in CCR §3698 (a)(b)(d)(e) and CCR §3699, and less a projected amount from mine operations subject to the maximum fee amount of \$4,000;

Where: AT_{RY} is the Adjusted Total for the current "Reporting Year"

Where: AT_{PY} is the Adjusted Total for the "Prior Year"

The new Fee Amount for each category is determined by the following formula (calculated amounts cannot be less than \$100 or more than \$4,000, as adjusted for the

cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter, and may be rounded to the nearest \$1 (one dollar):

Formula 1: Current Year Reporting Fee = Prior Year Reporting Fee times (1 + Factor) if Factor is positive;

Formula 2: Current Year Reporting Fee = Prior Year Reporting Fee times (1 - Factor) if Factor is negative.

(1) Operations where the primary mineral commodity produced is either aggregate products or industrial minerals shall be assessed a fee as follows:

Tons	Fee in Dollars
0 - 100	Formula 1 or 2 (not less than \$100)
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 50,000	Formula 1 or 2
>50,000 - 100,000	Formula 1 or 2
>100,000	4,000

(2) Operations where the primary mineral commodity produced is gold, silver, or precious metals shall be assessed a fee as follows:

Ounces	Fee in Dollars
0 - 1	Formula 1 or 2 (not less than \$100)
>1 - 10	Formula 1 or 2
>10 - 50	Formula 1 or 2
>50 - 150	Formula 1 or 2
>150 - 300	Formula 1 or 2
>300	4,000

(3) Operations where the primary mineral commodity produced is base metals or other metals shall be assessed a fee as follows:

Pounds	Fee in Dollars
0 - 10	Formula 1 or 2 (not less than \$100)
>10 - 100	Formula 1 or 2
>100 - 1,000	Formula 1 or 2
>1,000 - 10,000	Formula 1 or 2
>10,000 - 20,000	Formula 1 or 2
>20,000	4,000

(d) The initial reporting fee for surface mining operations shall be five hundred dollars (\$500).

(e) The annual reporting fee for newly permitted surface mining operations which have not yet begun operations shall be one hundred dollars (\$100).

(f) In addition to the annual reporting fees, the board shall collect five dollars (\$5) per ounce of gold and ten cents (\$0.10) per ounce of silver mined within the state during the reporting year.

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.

§ 3699. Low Gross Exemptions.

(a) For the calendar reporting year, a single operator or mining company may file with the Office of Mine Reclamation of the Department of Conservation, a written request for an exemption from the method of fee assessment set forth in Section 3698. Neither the State, nor any county, city, district or other political subdivision shall be eligible for an exemption under this Section. A request for an exemption must be filed on a form (Low Gross Exemption Fee Request, Form MRRC-4L) supplied by the Department of Conservation and received by the Department of Conservation by July 1 following the calendar reporting year. The Department of Conservation shall grant the exemption if information submitted and confirmed by the annual report form and approved reclamation plan, clearly demonstrates that the operation meets the following criteria:

(1) Material is extracted from one surface mining operation, and lead agency

14CCR §3698 and §3699

approval of a reclamation plan and financial assurance has been obtained; and

(2) All of the single operator or mining company's surface mining operation located in the State of California is tied to, or located on, one site; and

(3) The amount of the operator's gross income from the surface mining operation for the reporting calendar year was less than \$100,000, and proof of gross income is supplied in the form of a signed federal tax return or returns accompanied by a completed and signed Federal Internal Revenue Service Form 4506, or a report prepared and signed by a certified public accountant; and

(4) The owner or operator has submitted an annual reporting fee of four hundred dollars (\$400) as adjusted for the cost of living as measured by the California Consumer Price Index for all urban consumers, calendar year averages, using the percentage change in the previous year, beginning with the 2005-2006 fiscal year and annually thereafter.

(b) For any request received on or before July 1 following the reporting calendar year the Department may afford the applicant one 30-day period in which to correct minor deficiencies in the application.

(c) If the Department of Conservation determines that an exemption is not warranted, the operator may appeal that determination to the Board. The appeal must be submitted in writing within fifteen (15) days of the denial of exemption notification by the Department of Conservation. The Chairman of the Board or his designee (Board Member) shall determine whether the Board has jurisdiction for the purposes of an appeal. In order for the Board to have jurisdiction the appeal must:

(1) Demonstrate the exemption request was complete and filed in a timely fashion;

(2) Specifically relate to the exemption criteria outlined in this Section; and

(3) Specify the appellant's arguments for granting the exemption.

(d) If the appeal is within the Board's jurisdiction, the Board, based on all the evidence in the record, may affirm the Department's decision or grant the exemption. If the operator does not appeal, the appeal is not within the Board's jurisdiction, or the Board affirms the Department's decision, the operator or owner shall submit an annual 14CCR §3698 and §3699

reporting fee calculated upon the total mineral commodity produced pursuant to Section 3698. Such fee shall be submitted within thirty (30) days of notification by the Department of Conservation or the Board. An operator or owner submitting an annual reporting fee later than thirty (30) days after notification shall be assessed a penalty and interest as provided in Public Resources Code Section 2207(d)(5).

NOTE: Authority cited: Section 2207, Public Resources Code. Reference: Section 2207, Public Resources Code.